

**In the Drawings:**

The attached sheet of drawings includes changes to Figure 2. This sheet replaces the original sheet including Figure 2. In Figure 2 the X-axis and Y-axis are further respectively shown as “Deformation of  $\gamma$  at 1 Hz” and “Oscillatory viscosity  $\eta^*$  [Pa.s]”.

Attachment: Replacement Sheet

Annotated Sheet Showing Changes

## **REMARKS**

### **Amendments in the Specification and Drawings**

The specification has been amended to more precisely define the curves of Figure 1 and 2.

The amended definition given in Figure 1 is taken from the text set forth on page 10, lines 22-26 of the application as filed.

The definition given in Figure 2 is resulting from Figure 2 itself, from the passage of page 5, lines 9-11, of the application as filed, and with regard to the measurement at a constant frequency of 1 Hz, from routine measurement of dynamic viscosity known to one skilled in the art as evidenced by Ineke van Tiggelen-Aarden cited farther herebelow. Furthermore, the Declaration under 37 CFR §1.132 of Dr. Tranchant, evidences that the conditions for the determination of Figure 2 where made at a constant frequency of 1 Hz.

No new matter has been added.

### **Amendments to the Claims**

Claims 66-89 are pending in the application.

Upon entry of the foregoing amendments claims 1-65 have been cancelled without prejudice or disclaimer to the subject matter contained therein. Applicants retain the right to pursue the subject matter of any of the cancelled claims in a divisional, continuation or continuation-in-part application.

New claims 66-89 have been added. The new claims do not add any new matter within the meaning of 35 U.S.C. §132. Therefore entry of the amendments is respectfully requested.

**REJECTION UNDER 35 U.S.C. §112, FIRST PARAGRAPH**  
**– WRITTEN DESCRIPTION**

The Examiner has rejected claims 24, 26-29, 32-35, 37-40, 42-46, 48-51, 54, 56, 58-61 and 64 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that the rejected claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors, at the time application was filed, had possession of the claimed invention. Specifically, the Examiner states that the instantly claimed formulation with dimethiconol SGM-36 from Dow Corning, and that this preferred polymer has a dynamic viscosity of 6,400 Pa·s at 25°C. However, the Examiner is of the position that Weijermars also teaches SGM-36 from Dow Corning with a Newtonian/dynamic viscosity of almost 50,000 Pa·s at 25°C. See, Figure 2, Weijermars Naturwissenschaften, 1986, 73:33-34. The Examiner states that this constitutes about a 10 fold difference in viscosity for the same polymer measured at the same temperature.

Applicants traverse this rejection. Applicants respectfully submit that the rejected claims have been cancelled and new claims 66-89 fully comply with the written description requirement of 35 USC § 112, first paragraph.

Applicants assert that the specification, figures, and examples, i.e., the application, clearly conveys that which Applicants have invented and that subject matter which is claimed.

Namely, it is respectfully submitted that in Figure 2 of the instant specification the deformation  $\gamma$  given in the abscissa has no unit and the notation of Hz is a typographical error obvious to one of skill in the art. Herein it is submitted by the Declaration under 37 C.F.R. §1.132 by Jean-François Tranchant that the data discussed in the April 28, 2009 Declaration of Dr. Grossiord was generated at 1 Hz. Specifically, Dr. Tranchant has provided a copy of the corresponding laboratory notebook as Appendix A to the response, which identifies the conditions for the determination of Figure 2 of the instant application. Specifically, it is shown that the

measures of the oscillatory viscosity curves in function of Deformation  $\gamma$  were made at a constant frequency of 1 Hz.

As such, the difference between the Newtonian viscosity reported by Weijermars for SGM-36 from Dow Corning and the dynamic viscosity shown in Figure 2 of the instant application are attributable to a difference in the frequency at which the values were measured.

Furthermore, Applicants respectfully submit a replacement drawing sheet for Figure 2 showing this correction, as Appendix B.

Therefore, Applicants respectfully submit that there is no contradiction between the complex dynamic viscosity  $\eta^*$  of the instant application and the Newtonian viscosity values taught by Weijermars. The instant specification conveys that Applicants were in possession of the invention.

As such, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

#### **REJECTIONS UNDER 35 U.S.C. §103(a),**

##### **Maksimowski et al. in U.S. Patent No. 4,983,383 "Maksimowski"**

The Examiner has rejected claims 24, 26-29, 33-35, 37-40, 44-46, 48-51, 54, 56, 58-61 and 64 are rejected as obvious over Maksimoski et al. in U.S. Patent No. 4,983,383.

In view of the following, this rejection is respectfully traversed. The rejected claims have been cancelled and new claims 66-89 are patentable over Maksimoski.

This instant subject matter is directed to, in part, methods of providing aesthetic effect eyelash fibres comprising: forming droplets on the tips of eyelash fibres by applying to the tips of the

eyelash fibres an essentially anhydrous composition comprising 5 to 30% by weight of a linear dimethiconol having a dynamic viscosity of around 6,400 Pa.s at 25°C, and a viscoelasticity having a conservation modulus  $G'$  and a loss modulus  $G''$ , such that  $G'$  is less than  $G''$  for frequencies lower than 0.3 Hz and greater than  $G''$  for frequencies higher than 3 Hz, and the two curves representing  $G'$  and  $G''$  as a function of the frequency having a point of intersection in the interval between 0.3 and 3 Hz, dispersed in an anhydrous volatile solvent; thereby forming a droplet on the tips of the eyelash fibres.

Maksimoski does not teach the claimed method of forming droplets on eyelash fibers using an anhydrous composition. As previously presented, the “non-solubilized particles” of Maksimoski must be dispersed in the silicone gum, not solubilized in the hair care composition. (See, col. 3, line 31). Further, the particles of Maksimoski are of large enough size to increase hair volume. Thus, the particulate of Maksimoski may serve as a viscoelasticity-modifying agent, and the compositions would not be capable of serving according to the instantly claimed methods. Again, Applicants stress that this is true since the compositions of Maksimoski are designed to modify the volume of hair, and such compositions are known in the art to be thick.

As such, each and every element of the instant claims is not shown in Maksimoski. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the outstanding rejection.

**Rejections over Krzysik et al. in view of Sandewicz et al.**

The Examiner has rejected claims 24, 27, 32, 35, 38, 42-43, 46, 49, 52-53, 56 and 59 are rejected as obvious over Krzysik et al. in U.S. Patent No. 5,399,342 in view of Sandewicz et al. in U.S. Patent No. 6,451,329.

In view of the following, this rejection is respectfully traversed. The rejected claims have been cancelled.

The instantly claimed subject matter is characterized above.

It appears that these mascara compositions of the cited references are emulsions. As described on example 1, column 3, lines 51-54, the mascara compositions B-A are in the form of oil in water emulsions prepared by heating ingredient 1 and then in water prepared by heating ingredient 1 and then by adding ingredients 2 and 3 in this order. Then, the mixture of ingredients 1 to 3 is heated up to 85°C and then the pigment ingredients 4 and 5 are added and dispersed using an homogenizer. Ingredients of groups A and B are maintained at 85°C and then all ingredients of group C are heated to 80°C and added to group A and B using a propeller mixer. Then, ingredients of group D are added and the whole is cold at 35°C and the preservative of group E is added. Thus, the compositions disclosed in the cited references are emulsions which are not capable of forming drops at the end of eye lashes as claimed. It has to be noted that the first ingredient in group A is water which presents at least 47% of the composition.

In the case of the invention, as now claimed, the compositions are anhydrous. The mention of the proportion of anhydrous compositions is set forth on page 6, lines 40 and 50 of the initial specification. To more differentiate from the Krzysik prior art reference, the independent claims have been amended to recite an “essentially anhydrous composition”. In the instant claims, as disclosed in the specification as filed, page 6, the volatile solvent is an anhydrous solvent which is necessary to provide anhydrous composition.

In addition, in Krzysik prior art reference, there are used a number of waxes. These waxes are used in group C and are common to all the examples of Krzysik including example G which relates to a silica of the type used in the invention. Krzysik comprised important amounts of waxes such as Carnauba wax, Candellia wax ; bee wax, stearic acid and possibly an alkylmethylene silicon wax, all these waxes are strong sticking ingredients and will provide such a thicker composition that it can not be able to provide drops on the eye-lashes.

In the case of the instant subject matter, it is sought to obtain a drop at the end of the eye-

lashes, which can be deposited from anhydrous solution with a pencil, this drop being deposited like a bowl on a Christmas tree.

Accordingly, the Examiner is respectfully requested to reconsider and withdraw the outstanding rejection.

**CONCLUSION**

If the Examiner has any questions or wishes to discuss this matter, the Examiner is welcomed to contact the undersigned attorney.

Respectfully submitted,

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**ENCLOSURES:**

Appendix A: Declaration from co-inventor TRANCHANT under 37 CFR§1.132

Appendix B: Replacement Sheet for FIGURE 2 and Annotated Sheet Showing Changes